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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROLEX WATCH U.S.A., INC.,

Plaintiff,

v.

JULIO MUNOZ, individually and d/b/a
WWW.YOUTUBEWATCHES.COM;
UNKNOWN WEBSITES 1-10; "JOHN
DOES" 1-10; and UNKNOWN ENTITIES 1-
10

Defendants.

Case No.

**AFFIDAVIT OF CHARLES BERTHIAUME
IN SUPPORT OF PLAINTIFFS' *EX PARTE*
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER; ORDER TO
SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT BE ISSUED;
EXPEDITED DISCOVERY ORDER; AND
AN ORDER TEMPORARILY SEALING
THE COURT FILE.**

CHARLES BERTHIAUME, hereby declares and states under penalty of perjury as
prescribed by 28 U.S.C. §1746:

1. I am the Senior Vice President – Technical Operations for the plaintiff, Rolex Watch U.S.A, Inc. ("Rolex") and I submit this declaration in support of Rolex Watch U.S.A., Inc.'s *ex parte* application for a temporary restraining order; order to show cause why a preliminary injunction should not be issued; expedited discovery order; and an order temporarily sealing the court file against defendant Julio Munoz, individually and d/b/a www.youtubewatches.com; Unknown Websites 1-10; "John Does" 1-10; and Unknown Entities 1-10, (hereinafter collectively referred to as "Defendants").

www.youtubewatches.com; Unknown Websites 1-10; “John Does” 1-10; and Unknown Entities 1-10, (hereinafter collectively referred to as “Defendants”).

2. The facts set forth in this declaration are known personally by me or from a review of Rolex’s records and are known to be true and correct, and if called upon as a witness I could and would competently testify thereto.

3. Rolex is a corporation duly organized and existing under the laws of the State of New York, having an office and principal place of business at 665 Fifth Avenue, New York, New York 10022.

4. Rolex is the exclusive distributor and warrantor in the United States of Rolex watches, all of which bear one or more of Rolex’s Registered Trademarks. Rolex watches are identified by the trade name and trademark ROLEX and one or more of Rolex’s trademarks.

5. Rolex is responsible for assembling, finishing, marketing and selling in interstate commerce high quality Rolex watches, watch bracelets and related products for men and women.

6. Correct and true copies of certified copies of Rolex’s federal trademark registrations (hereinafter collectively referred to as the “Rolex Registered Trademarks”) are attached hereto as **Exhibit 1**.

7. On or about December 2011, Rolex discovered the website www.youtubewatches.com (the “Website”) which is being used to advertise, distribute, promote, offer for sale and sell watches bearing counterfeits and infringements of the Rolex Registered Trademarks. Representative sample printouts of this website are attached hereto as **Exhibit 2** and incorporated herein by reference. These watches are sold as “100% mirror genuine ones” and as “almost the same feel and weight as original.” It is clear that these items are not genuine Rolex Watches.

8. Further, Defendants are using the website www.craigslist.org to advertise the Website and watches bearing counterfeits and infringements of the Rolex Registered Trademarks. Sample listings of the www.craigslist.org advertisements are attached hereto as **Exhibit 3** and incorporated herein by reference.

9. The Website is registered to Munoz at the address 13801 Chef Menteur Highway, #14, New Orleans, LA 70129 and the phone number (504) 210-7986. A copy of the Whois information for the Website is attached hereto as **Exhibit 4** and incorporated herein by reference.

10. As detailed in the affidavit of Benjamin Kwapisz submitted herewith, Rolex's agent purchased one (1) watch from Defendants bearing counterfeits and infringements of the Rolex Registered Trademarks (the "Counterfeit Watch").

11. Rolex's representative has examined the Counterfeit Watch and determined that none of its parts, including the dial, bracelet links, bezel and movement are of Rolex origin. The Counterfeit Watch contains numerous counterfeits and infringements of the Rolex Registered Trademarks. See Affidavit of John Crowe.

12. To date, Defendants continue to offer for sale and sell watches bearing counterfeits of the Rolex Registered Trademarks on the Internet.

13. As I have experienced, the only way for Rolex to obtain proper relief against counterfeiters is on an *ex parte* basis. If notice is given to Defendants, they are likely to conceal and/or destroy all illegal inventory and records relating to its purchases and sales. Further, Defendants are likely to secrete and conceal all income related to such illegal sales therefore Rolex would never fully learn the scope of Defendants' unauthorized activities.

14. Rolex has pursued multiple legal actions against counterfeiters and has gone to great lengths to protect its name and enforce its trademarks. The harm to Rolex is great. Rolex's goodwill

is being preyed upon by those selling poor quality merchandise and making exorbitant profits. Defendants are being unjustly enriched from their use of the Rolex Registered Trademarks.

15. Such unauthorized activity undercuts and threatens to destroy the market for authorized watches. Rolex spends substantial sums and resources advertising and promoting its watches. Defendants benefit from Rolex's marketing efforts but distribute watches bearing counterfeits of the Rolex Registered Trademarks. Rolex is suffering severe and irreparable injury because of the distribution of watches bearing counterfeits of the Rolex Registered Trademarks.

16. Wherefore, it is respectfully requested that Rolex's request for a temporary restraining order against Defendants be granted.

Dated: January 31, 2012


CHARLES BERTHIAUME

Sworn to before me this 31 day
of January, 2012.


Notary Public

WALTER MICHAEL LEE
Notary Public, State of New York
No. 02LE6117620
Qualified in New York County
Commission Expires October 25, 2012